

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

<b>United States District Court</b>		District District of North Dakota <u>3:07-CV-61</u>
Name of Movant <b>Michael Anthony Abeyta</b>	Prisoner No. 09291-059	Case No. 3:05-CR-161
Place of Confinement <b>Victorville United States Penitentiary</b>		
<div style="display: flex; justify-content: space-between;"> <span>UNITED STATES OF AMERICA</span> <span>v. <u>Michael Anthony Abeyta</u> (name under which convicted)</span> </div>		
<b>MOTION</b>		
<p>1. Name and location of court which entered the judgment of conviction under attack _____  <u>United States District Court for the District of North Dakota, 655 1st Avenue North, Fargo, ND 58102</u></p>		
<p>2. Date of judgment of conviction <u>1-11-2007</u></p>		
<p>3 Length of sentence <u>360 months (count 1), 240 months (count 2)</u></p>		
<p>4. Nature of offense involved (all counts) _____  <u>Conspiracy to possess with intent to distribute controlled substance, Money laundering controlled substance</u>  <del>self/distr/disp - Money laundering conspiracy to conceal and disguise nature, location, ownership, and control of</del>  <u>proceeds of specified unlawful activity.</u></p>		
<p>5. What was your plea? (Check one)</p> <p>(a) Not guilty <input type="checkbox"/></p> <p>(b) Guilty <input checked="" type="checkbox"/></p> <p>(c) Nolo contendere <input type="checkbox"/></p> <p>If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:</p> <p>_____</p> <p>_____</p> <p>_____</p>		
<p>6. If you pleaded not guilty, what kind of trial did you have? (Check one)</p> <p>(a) Jury <input type="checkbox"/></p> <p>(b) Judge only <input type="checkbox"/></p>		
<p>7. Did you testify at the trial?          Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>		
<p>8. Did you appeal from the judgment of conviction?          Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>		

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9. If you did appeal, answer the following:

(a) Name of court \_\_\_\_\_

(b) Result \_\_\_\_\_

(c) Date of result \_\_\_\_\_

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes", give the following information:

(a) (1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(b) As to any second petition, application or motion give the same information:

(1) Name of court \_\_\_\_\_

(2) Nature of proceeding \_\_\_\_\_

(3) Grounds raised \_\_\_\_\_

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result \_\_\_\_\_

(6) Date of result \_\_\_\_\_

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒(2) Second petition, etc. Yes ☐ No ☒

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

Attorney advised me not to try and appeal

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

**CAUTION** If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

(a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.

(b) Conviction obtained by use of coerced confession.

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- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: Ineffective assistance of council

Supporting FACTS (state *briefly* without citing cases or law) \_\_\_\_\_

Though I signed the plea agreement I was made to feel that I had no other choice. I also did not fully understand the terminology that my attorney used when presenting the plea to me. Even though I desired to do so I was told by my attorney that she did not want to bother having to deal with the states witnesses because they would only say what the state wanted them to say in order to get a better deal that I might as well go ahead and sign the plea. I felt that I had no other choice she said she did not have the time to deal with a trial.

B. Ground two: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

C. Ground three: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

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\_\_\_\_\_

\_\_\_\_\_

D. Ground four: \_\_\_\_\_

\_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing Att. Tami Norgard 218 NP AVENUE

FARGO ND 58102

(b) At arraignment and plea Att. Tami Norgard 218 NP AVENUE

FARGO ND 58102

(c) At trial \_\_\_\_\_

\_\_\_\_\_

(d) At sentencing \_\_\_\_\_

\_\_\_\_\_

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(e) On appeal \_\_\_\_\_  
\_\_\_\_\_(f) In any post-conviction proceeding \_\_\_\_\_  
\_\_\_\_\_(g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_  
\_\_\_\_\_

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒(a) If so, give name and location of court which imposed sentence to be served in the future: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_(b) Give date and length of the above sentence: \_\_\_\_\_  
\_\_\_\_\_

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

5/30/07  
(date)Michael R. Heston  
Signature of Movant